

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 930 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANBI AJABHAI VIRAMBHAI

Versus

KANBI SAGRAM JIVRAM

Appearance:

MR PJ VYAS for Petitioner

SERVED for Respondent No. 1, 3

MR JB SHAH for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 09/10/96

ORAL JUDGEMENT

The petitioner prays for a writ of certiorari or any other appropriate writ, directions or orders quashing and setting aside the order passed by the Gujarat Revenue Tribunal on 2.4.1985 rejecting the Revision Application preferred by him; and thereby confirming the order of the ALT declaring respondent No. 2 to be the tenant of

agricultural land bearing survey No. 235/2 i.e. Block No. 242 of Soni.

2. There is an agricultural land bearing survey no. 235/2 admeasuring 5 acres 39 gunthas within the sim of village Soni in Taluka Deodar. After consolidation proceedings under the Bombay Prevention and Fragmentation and Consolidation of Holdings Act, the said agricultural land has been given Block no. 242. The respondent No.1 was the owner of the land. He sold the land to the present petitioner in 1966 after obtaining necessary permission on 12.7.1966. Since then the petitioner is in possession of the land. The respondent No. 2 is having no right, title or interest in the land. However, he claims his tenancy rights alleging that he was cultivating the land, and as such he was the tenant of the land. Balvant Mana once in past was the tenant of the land, but his name came to be deleted vide entry No. 210 dated 27.5.1957 and that entry came to be certified on 6.7.1957. In the year 1977 the Mamlatdar and ALT initiated the proceeding being Tenancy case No. 2909 of 1977 under Section 32G of the Bombay Tenancy Act. The proceedings were initiated suo motu. At the conclusion of the hearing the ALT held that respondent No. 2 was the tenant, but as the land was sold, the petitioner was in possession of the land. On 23.2.1978, the ALT therefore dropped the proceedings. Hence appeal was preferred being Tenancy Appeal No. 11 of 1978. The then Deputy Collector hearing the appeal on 9.5.1978, set aside the order of the Mamlatdar and ALT holding that respondent No. 2 was not only the tenant but was entitled to purchase the land also. He then directed the Mamlatdar to take necessary action under Section 84-C of the Bombay Tenancy Act as he found that the sale made in favour of the petitioner was not legal and valid. Against that order, revision was preferred being TENBA 813 of 1980 before the Gujarat Revenue Tribunal. On 31.8.1981 the Tribunal set aside the orders of the Deputy Collector and the Mamlatdar, observing that the enquiry was not properly held, evidence was not correctly recorded, and notices to the parties were not properly issued. The matter therefore was remanded for fresh enquiry. The Mamlatdar and ALT then again heard the parties; but did not issue the notice to Balvant Mana whose name was, once in past, running in the revenue record as the tenant. It is alleged that prior to 1957 his name was running in the record. On 26.2.1982 the Mamlatdar and ALT held that respondent No. 2 was the tenant. Against that decision the appeal being Tenancy Appeal No. 6 of 1982 was preferred. The then Deputy Collector disposed of the appeal on 13.9.1982 confirming

the order of the Mamlatdar and ALT. He, thus, dismissed the appeal. Against that decision the revision being TENBA 1810 of 1982 was preferred before the Gujarat Revenue Tribunal. On 2.4.1985 the Tribunal dismissed the revision and confirmed the order passed by the Deputy Collector. Being aggrieved by such decision of the Tribunal, the present petition is filed challenging the legality and validity of the order passed by the Tribunal, and praying for the issuance of a writ of certiorari or any other appropriate writ quashing the impugned order.

3. Mr. P.J. Vyas, the learned Advocate representing the petitioner while assailing the Tribunal's order submitted that though the Tribunal formerly on 31.8.1981 remanded the matter directing to issue notices to all concerned, the Mamlatdar and ALT did not issue the notice to Balvant Mana whose name was once running as tenant in revenue record and thus the direction of the Revenue Tribunal was set at naught; consequently the conduct of the proceedings was bad right from the inception; and so a fresh trial was necessary giving a notice to Balvant Mana.

4. The answer to the question whether omission to give notice to Balvant Mana and hear him is fatal to the proceedings is the decisive factor. The copy of the judgment delivered by the Gujarat Revenue Tribunal in Revision Application No. TENBA 813 of 1980 is produced at Annexure-B. In the judgement there is a reference about Balvant Mana and entries in revenue record relating to the years 1955-56 to 1958-59; but the case was remanded for a fresh consideration not on the ground that notice to Balvant Mana was not issued and he was not heard; it was on the ground that the parties on record were not represented by the advocates and so there was no effective cross-examination of the witnesses; the opponent no. 2 could not lead evidence he wanted to, and there was no evidence on record showing how the land was made the part of Bloc No. 242 when respondent No. 2 was cultivating it as a tenant on 6.12.1956. While remanding, the Mamlatdar and ALT was directed to hold fresh inquiry as to whether the opponent no. 2 was cultivating the land as a tenant on 1.4.1957 and had become the deemed purchaser? The direction to issue the notice to Balvant Mana and hear him was not at all given. When that is so, omission on the part of the Mamlatdar & ALT to give notice and hear Balvant Mana is not at all fatal to the tenancy case as canvassed before me.

5. In the alternative also the inquiry made and

procedure adopted in the tenancy case cannot be held bad in law. Whether Balvant Mana was required to be heard is the crucial question. Those who are interested, looking to the issue in question, are required to be heard, but in that case, where effective order cannot be passed without the absent party. Where full and final adjudication of the rights and interest of the parties on record is possible without hearing the absentee, omission to hear the absentee would not be fatal.

6. For the year 1955-56 the name of Balvant Mana was found in revenue record as the cultivator, but for the year 1956-57 to 1958-59 the name of respondent No. 2 was found to have been entered; while from 1959-60 and onwards the name of opponent No. 1 - the landlord appeared on revenue record and from the year 1968-69 the name of the petitioner has been mutated. As per the entry no. 210 dated 27.5.1957 which came to be certified on 6.7.1957 after procedural formalities, the respondent No. 2 was found cultivating the land on 1.5.1957 the tillers day and not Balvant Mana. The Mamlatdar & ALT on the basis of such entries initiated the tenancy case so as to decide whether opponent No. 2 was cultivating the land on 1.4.1957 and entitled to purchase the land. In order to decide this crucial question Balvant Mana was not required to be heard; without a notice to him and hearing him, full and final adjudication of the question in issue was possible. The right or interest of Balvant Mana was not at issue and so without any legal hitch it was possible to pass effective order qua respondent No. 2. It may also be remembered that about the position of such entries, as made clear by the Gujarat Revenue Tribunal in the judgement dated 2.4.1985 there was no controversy. Balvant Mana was not cultivating the land on tillers day was the fact, not in dispute. It may again be stated that whether Balvant Mana was cultivating on tillers day and as such entitled to purchase the land was not at issue. When that is so omission to give notice to Balvant Mana and hear him is not fatal to the case. In view of the matter there is no justifiable reason to remand the case for a fresh consideration.

7. In the aforesaid circumstances, I do not find any reason to interfere in this writ application, and the same is therefore dismissed without however any order as to costs. Rule discharged.

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